IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN GAGIEV	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 26-169-JFM
	:	
MICHAEL ROSE ET AL.,	:	
	:	
Respondents.	:	

SUPPLEMENTAL BRIEFING

I. INTRODUCTION

Respondents submit this second supplemental briefing in response to the Court's February 17, 2026 Order requesting briefing on "the applicability of *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), and *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) ("*Mezei*"), regarding the question of whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to Mr. Gagiev," including by addressing "the implications of the 'entry fiction' doctrine discussed in those cases." ECF No. 9.

Thuraissigiam and *Mezei* support that Petitioner falls squarely under § 1225(b)(2)(A)'s mandatory detention requirement, as, although he may have previously been paroled into the United States after seeking admission at a port of entry, he was and remains an "applicant for admission" to the United States.

II. ARGUMENT

Petitioner is an "applicant for admission," lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), not § 1226. This interpretation of the statute comports with and

is supported by *Thuraissigiam*, 591 U.S. 103, and *Mezei*, 345 U.S. 206, and the "entry fiction" doctrine applied therein.

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2).

Section 1225(a)(1) defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see also Matter of Lemus*, 25 I.&N. Dec. 734, 743 (BIA 2012) (describing Congress's broad, "unconventional" definition of "applicant for admission"). The term "applicant for admission" includes both (1) arriving aliens (one who "arrives in the United States"), such as Petitioner, and (2) aliens present without admission.[1] *See* 8 U.S.C. § 1225(a)(1). In addition, 8 CFR 1001.1(q) defines "arriving alien" to mean, in pertinent part, "an applicant for admission coming or attempting to come into the United States at a port-of-entry, ... An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 CFR 1001.1(q).

Here, because Petitioner sought admission when he applied for admission into the United States at a port-of-entry, *see* ECF 1 (Pet.) ¶ 2, he was and remains "by definition, [] an arriving alien." *Contreras v. Oddo*, 2025 WL 2104428, *4 (W.D.

[1] It is this second category that is implicated in the separate *Hurtado* category of cases, which Respondents' response in opposition to the habeas petition noted and distinguished. *See* ECF No. 4 at 5; *see also Matter of Hurtado*, 29 I & N Dec. 216 (BIA 2025). *Hurtado* cases involve individuals who entered the United States without inspection and who, after a passage of time, were encountered by immigration authorities in the interior, placed in standard removal proceedings, and recently detained under 8 U.S.C. § 1225(b)(2)(A); *see, e.g., Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025).

Pa. July 28, 2025). Petitioner's parole did not change that he continues to seek admission. *See* 8 CFR 1001.1(q); *Thuraissigiam*, 591 U.S. at 140. The statute authorizing humanitarian parole further confirms this by stating, "*parole* of such alien *shall not be regarded as an admission of the alien* and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A) (emphases added); *see also Chi Thon Ngo v. INS*, 192 F.3d 390, 392 n.1 (3d Cir. 1999) ("When parole is revoked, the alien reverts to the status of an applicant for admission."). Therefore, "without Petitioner's grant of parole, his detention is mandatory as an inadmissible arriving alien." *Contreras v. Oddo*, 2025 WL 2104428, *5 (W.D. Pa. July 28, 2025) (citing 8 U.S.C. § 1225(b)(1)). "Thus, under the applicable law, Petitioner's detention is lawful." *Id.*

B. *Thuraissigiam*, *Mezei*, and the "entry fiction" doctrine confirm Petitioner's status as an "applicant for admission" subject to 8 U.S.C. § 1225(b)(2)(A).

The government's reading of 8 U.S.C. § 1225(b)(2)(A) to require Petitioner's mandatory detention, described above and briefed in further detail in the government's response to the habeas petition, ECF No. 4 at 16–18, not only adheres to the statute's text and congressional intent, but it also brings the statute in line with the longstanding "entry fiction" doctrine. Courts have employed this doctrine for well over a century to avoid giving favorable treatment to aliens present in the United States but who have not been lawfully admitted.

Under the "entry fiction" doctrine, "aliens who arrive at a port of entry . . . are treated for due process purposes as if stopped at the border," and "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." *Thuraissigiam*, 591 U.S. at 107, 139; *see also Mezei*, 345 U.S. at 215 (stating aliens stopped at border when attempting to enter United States may enjoy "temporary harborage" on United States soil while in custody of immigration authorities, but they obtain "no additional rights" and are treated "as if stopped at the border"); *see also Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 448 (3d Cir. 2016) (rejecting habeas petitioner's Suspension Clause claims and describing Supreme Court's "entry fiction" caselaw as "deny[ing] due process rights to aliens even though they are unquestionably within the territorial jurisdiction of the United States").

In *Thuraissigiam*, the Supreme Court described that aliens who arrive at a port of entry may have technically "entered" the United States physically, but they are "'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139 (quoting *Mezei*, 345 U.S. at 215); *see also Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th Cir. 2004) ("[T]he doctrine 'provides that although aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to be detained at the border and hence as never having effected entry into this country.'" (quoting *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995))).

The doctrine applies equally to aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *See Thuraissigiam*, 591 U.S. at 139; *see also Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status[.]"); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (detaining noncitizen at Ellis Island and later paroling her into custody of charity, which permitted her to live with her father, until she could be deported safely); *Singh v. Att'y Gen. of United States*, 12 F.4th 262, 283 (3d Cir. 2021) (Matey, J., concurring) ("[A]n alien paroled into the United States has not 'entered' the United States for immigration purposes." (quoting *Correa v. Thornburgh*, 901 F.2d 1166, 1169 n.3 (2d Cir. 1990)).

The entry fiction doctrine rests on the principle that the "power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit" and to "set the procedures to be followed" in doing so. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quotations omitted); *see also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). The entry fiction doctrine protects that power, which "would be

meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil." *Id.*

Although *Thuraissigiam* involved an "applicant for admission" detained shortly after crossing the border unlawfully between ports of entry, with the Court concluding he "had only those [Due Process] rights regarding admission that Congress has provided by statute," the Court also discussed the application of the entry fiction to those arriving at a port of entry. *See* 591 U.S. at 108, 138–140. The Court explained, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Id.* at 139. The Court did not draw any temporal or geographic line on the application of the doctrine, which would create a difficult and improper line-drawing exercises for courts. Such an exercise would also impinge on the "sovereign prerogative" of "the political department of the government" to "set the procedures to be followed in determining whether an alien should be admitted." *See id.* at 139.

Here, the political department has exercised its sovereign prerogative in deeming any alien who is "present in the United States [but] who has not been admitted" as an "applicant for admission." 8 U.S.C. § 1225(a)(1). This definition holds true even for arriving aliens—such as Petitioner—who have been paroled into the country. *See Thuraissigiam*, 591 U.S. at 139; 8 *see also* U.S.C. § 1182(d)(5)(A); 8 CFR 1001.1(q). Accordingly, as an "applicant for admission" who is "seeking admission," Petitioner's detention falls under § 1225(b)(2)(A), not § 1226(a), and is

mandatory, regardless of how long he has been physically present here. Further, as explained above, because he is an arriving alien, the entry fiction doctrine limits Petitioner to only those procedural due process rights due to him under 8 U.S.C. § 1225. *See Thuraissigiam*, 591 U.S. at 140.

III. CONCLUSION

Because *Thuraissigiam*, *Mezei*, and the entry fiction doctrine support that Petitioner falls squarely under § 1225(b)(2)(A)'s mandatory detention requirement as an "arriving alien" who is an "applicant for admission," and for the reasons further explained in Respondents' response in opposition to the habeas petition (ECF No. 4), Respondents respectfully request that the petition for writ of habeas corpus be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Supplemental Briefing via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

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Dated: March 3, 2026